

**FEDERAL ELECTION COMMISSION**

999 E Street, N.W.  
Washington, D.C. 20463

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FEDERAL ELECTION  
COMMISSION

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**FIRST GENERAL COUNSEL'S REPORT**

**CELA**

MUR: 6993

DATE COMPLAINT FILED: December 14, 2015

DATE OF NOTIFICATION: December 21, 2015

DATE ACTIVATED: April 6, 2016

EARLIEST SOL: October 26, 2020

LATEST SOL: October 26, 2020

ELECTION CYCLE: 2016

**COMPLAINANT:**

EMILY'S List

**RESPONDENTS:**

Van Hollen for Senate and Stacey Maud in her  
official capacity as treasurer  
Rosalyn Levy Jonas

**RELEVANT STATUTES  
AND REGULATIONS:**

52 U.S.C. § 30104(b)  
52 U.S.C. § 30111(a)(4)  
52 U.S.C. § 30116(a)  
52 U.S.C. § 30120(a)  
11 C.F.R. § 100.26  
11 C.F.R. § 104.15  
11 C.F.R. § 110.11(a)  
11 C.F.R. § 110.11(c)(2)(v)

**INTERNAL REPORTS CHECKED:** Disclosure Reports

**FEDERAL AGENCIES CHECKED:** None

**I. INTRODUCTION**

The Complainant, EMILY's List, alleges that Van Hollen for Senate ("Committee") violated the Federal Election Campaign Act of 1971, as amended (the "Act"), by using information copied from the Complainant's disclosure reports to solicit contributions and by failing to include an appropriate disclaimer on a letter included with the solicitation. The Complainant also alleges that Rosalyn Levy Jonas may have made an in-kind contribution to the

1 Committee by paying for the letter included with the solicitation. Respondents, in a joint  
2 response, deny the allegations.

3 As discussed below, we recommend that the Commission find reason to believe that the  
4 Committee violated 52 U.S.C. § 30111(a)(4) and 11 C.F.R. § 104.15 by using Complainant's  
5 contributor information to solicit contributions, and 52 U.S.C. § 30120(a) and 11 C.F.R.  
6 § 110.11(a) by failing to include a disclaimer on the letter included in the mailing, and enter into  
7 pre-probable cause conciliation with the Committee. We also recommend that the Commission  
8 find no reason to believe that Rosalyn Levy Jonas violated 52 U.S.C. § 30116(a)(1)(A) by  
9 making an excessive contribution to the Committee because the Committee confirmed that it  
10 paid for the letter, not Jonas.

## 11 II. FACTUAL AND LEGAL ANALYSIS

### 12 A. Factual Background

13  
14  
15 EMILY's List is a non-connected political committee that supports female Democratic  
16 candidates who favor the "pro-choice" position on the issue of reproductive rights.<sup>1</sup> The  
17 Complainant states that on October 23, 2015, it produced an email comparing two Democratic  
18 candidates for the United States Senate in Maryland, Chris Van Hollen and Donna Edwards.  
19 The email's text referred to Van Hollen as the Democratic primary election opponent of  
20 Edwards, but in a graph later in the email, mislabeled Van Hollen as "(R)" [for Republican]  
21 instead of "(D)" [for Democrat].<sup>2</sup> Complainant states that it sent this communication to a test  
22 audience of approximately 5,000 individuals.<sup>3</sup> After being notified of the error within minutes of

<sup>1</sup> See <http://www.emilyslist.org/>.

<sup>2</sup> Compl. at 1 and Ex. A.

<sup>3</sup> Compl. at 1.

1 the email's transmission, the Complainant says that it immediately corrected the email.<sup>4</sup>  
2 Complainant states that it communicated with Van Hollen for Senate about the error, and offered  
3 to send a corrected version of the original email to the 5,000 recipients, but the Committee  
4 declined that offer.<sup>5</sup>

5 EMILY's List alleges that several days later, some of its donors who appeared on its  
6 2015 monthly disclosure reports notified it that they "received a letter from Rosalyn Levy Jonas  
7 accusing [Complainant] of 'deception' and engaging in 'aggressive, misleading tactics' in  
8 connection with the [email] communication."<sup>6</sup> In the letter, attached to the Complaint, Jonas  
9 identifies herself as a past Board Chair of NARAL Pro Choice America and a reproductive rights  
10 activist in Maryland.<sup>7</sup> The letter discusses the error that EMILY's List made in the email,  
11 provides information about Van Hollen's Democratic credentials, and urges support for Van  
12 Hollen in the Democratic primary election.<sup>8</sup> Complainant alleges that the letter was  
13 accompanied by a solicitation form—also attached to the Complaint—for Van Hollen's  
14 campaign that appeared on the back side of the Committee's reply envelope.<sup>9</sup>

15 In support of its allegation that Van Hollen for Senate impermissibly used EMILY's  
16 List's contributor information to solicit contributions, Complainant alleges that every individual  
17 who reported receiving the letter signed by Jonas is a contributor to EMILY's List and is listed  
18 on its disclosure reports, but none are listed as contributors on the Committee's disclosure

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<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.* at 2.

<sup>7</sup> *Id.*, Ex. B.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* at 3 and Ex. C.

1 reports.<sup>10</sup> While acknowledging that the Commission has permitted candidates to use contributor  
2 information to correct inaccuracies, Complainant alleges that the letter goes beyond correcting  
3 the record because it “praises Van Hollen, bashes his opponent, and inaccurately portrays the  
4 EMILY’s List email snafu as an intentional act of ‘deception,’” and includes a solicitation in the  
5 package.<sup>11</sup>

6 The Complainant alleges that although the solicitation form on the back of the reply  
7 envelope contains a disclaimer, “Paid for by Van Hollen for Senate,” the Jonas letter does not  
8 contain a required disclaimer.<sup>12</sup> Finally, the Complaint alleges that if Jonas paid for the letter,  
9 then she made an excessive contribution to Van Hollen for Senate because she had already  
10 contributed \$2,700 to the Committee.<sup>13</sup>

11 Respondents deny the Complaint’s allegations.<sup>14</sup> The Committee asserts that in response  
12 to the EMILY’s List email misidentifying Van Hollen as a Republican, it asked Jonas to write a  
13 letter concerning the email confirming the Democratic credentials of Van Hollen.<sup>15</sup> The  
14 Committee acknowledges that it mailed the letter and paid for it, as evidenced by the disclaimer  
15 on the reply envelope and the appearance of the Committee’s address under Jonas’s name as the  
16 return address on the outer mailing envelope.<sup>16</sup>

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<sup>10</sup> *Id.* at 2.

<sup>11</sup> *Id.* at 2-3.

<sup>12</sup> *Id.* at 3.

<sup>13</sup> *Id.* at 4 n.4.

<sup>14</sup> Resp. at 1.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.* at 1-2.

1 The Committee asserts that the Complaint provides no facts to support a violation that it  
2 used information from Complainant's contributors to solicit contributions because it does not  
3 identify the names of Complainant's donors or the number of donors who received the letter.<sup>17</sup>  
4 The Committee also asserts that "the context of the letter shows that its purpose was not to raise  
5 funds, but rather to respond to the misidentification of Representative Van Hollen's party  
6 affiliation and to promote his candidacy."<sup>18</sup> Furthermore, the Committee states that the return  
7 envelope was included "incidentally" and the letter "generated approximately \$3,000 in  
8 contributions."<sup>19</sup>

9 Additionally, the Committee asserts that it complied with the disclaimer provisions  
10 because a disclaimer is not required to be on every piece of a multi-piece mailing.<sup>20</sup> The  
11 Committee claims that a disclaimer need not appear on the front or cover page as long as it  
12 appears within the communication.<sup>21</sup>

13 **B. Legal Analysis**  
14

15 Political committees are required to file reports with the Commission identifying the  
16 names and mailing addresses of contributors.<sup>22</sup> The Act provides that the Commission shall  
17 make reports and statements filed with it available to the public for inspection and copying  
18 within 48 hours after receipt.<sup>23</sup> Any information copied from such reports or statements,

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<sup>17</sup> *Id.* at 2.

<sup>18</sup> *Id.* at 1.

<sup>19</sup> *Id.* at 1-2 n.4.

<sup>20</sup> *Id.* at 2.

<sup>21</sup> *Id.*

<sup>22</sup> 52 U.S.C. § 30104(b)(2)(A) and (b)(3)(A); 11 C.F.R. § 104.8(a).

<sup>23</sup> 52 U.S.C. § 30111(a)(4).

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1 however, "may not be sold or used by any person for the purpose of soliciting contributions  
2 or for commercial purposes," other than using the name and address of a political committee  
3 to solicit contributions from that political committee.<sup>24</sup> "Soliciting contributions" includes  
4 soliciting any type of contribution or donation, such as political or charitable contributions.<sup>25</sup>  
5 The Commission, however, has permitted the use of a political committee's contributor  
6 information to correct inaccurate information disseminated by that committee.<sup>26</sup>

7 Here, the Committee's letter was accompanied by a reply envelope, which solicited  
8 contributions for Van Hollen's Senatorial campaign. Complainant alleges that this letter was  
9 mailed to some of its contributors, but does not identify the number of its contributors who  
10 received it. In its response, the Committee does not deny that it used Complainant's contribution  
11 list to solicit contributions; rather, it argues that the "context" and "purpose" of the letter was to  
12 respond to misinformation rather than raise funds.<sup>27</sup> Nevertheless, the letter was accompanied by  
13 a solicitation, and the Committee acknowledges receiving \$3,000 in contributions in response to  
14 the solicitation. Based on the available information, it appears that the Committee used  
15 contributor information from Complainant's disclosure reports to solicit contributions.

<sup>24</sup> *Id.*; see also 11 C.F.R. § 104.15(a).

<sup>25</sup> 11 C.F.R. § 104.15(b).

<sup>26</sup> See Advisory Opinion ("AO") 1981-05 (Findley) (Commission permitted a candidate to use information obtained from disclosure reports to mail letters to an opponent's contributors to correct allegedly defamatory statements of the opponent) and AO 1984-02 (Gramm) (Commission permitted a candidate to inform contributors to a committee soliciting contributions on behalf of the candidate without his authorization of the identity of the candidate's authorized committee, but prohibited any solicitation).

<sup>27</sup> Resp. at 1-2 n.4.

<sup>33</sup> 11 C.F.R. § 110.11(c)(2)(v).

1 was distributed by a political committee and because it contains express advocacy in support of  
2 Van Hollen.<sup>34</sup> Therefore, we recommend that the Commission find reason to believe that the  
3 Committee violated 52 U.S.C. § 30120(a) and 11 C.F.R. § 110.11(a) by failing to include a  
4 disclaimer on the letter.<sup>35</sup>

5 Finally, Rosalyn Levy Jonas is also a respondent in this matter. If Jonas had paid for the  
6 letter, she would have made an excessive contribution to the Committee for the 2016 primary  
7 election because she had already made the maximum \$2,700 contribution to the Committee.<sup>36</sup>  
8 The Committee, however, admits that it paid for the letter.<sup>37</sup> Therefore, we recommend that the  
9 Commission find no reason to believe that Jonas violated 52 U.S.C. § 30116(a)(1)(A).

<sup>34</sup> 11 C.F.R. § 110.11(a)(1), (2).

<sup>35</sup> This is not a mere technical violation: the Jonas letter as well as the outer envelope suggest that Jonas herself was responsible for the letter. The letter is written on what appears to be Jonas's stationery, and the outer envelope lists Jonas's name, not the Committee's, as the return addressee. The Complaint, however, further alleges that the Committee's actions concerning the failure to include a disclaimer on the letter and the use of the contributor information were knowing and willful. Because the disclaimer appeared in at least one place within the package and the Committee's letter contained information to correct the record regarding Van Hollen's party affiliation, we do not recommend that the Commission find that these violations were knowing and willful.

<sup>36</sup> See 52 U.S.C. § 30116(a)(1)(A); Van Hollen for Senate's 2015 April Quarterly Report at 36.

<sup>37</sup> Resp. at 1-2.



**IV. RECOMMENDATIONS**

1. Find reason to believe that Van Hollen for Senate and Stacey Maud in her official capacity as treasurer violated 52 U.S.C. § 30111(a)(4) and 11 C.F.R. § 104.15;
2. Find reason to believe that Van Hollen for Senate and Stacey Maud in her official capacity as treasurer violated 52 U.S.C. § 30120(a) and 11 C.F.R. § 110.11(a);
3. Find no reason to believe that Rosalyn Levy Jonas violated 52 U.S.C. § 30116(a)(1)(A), and close the file as to her;
4. Approve the attached Factual and Legal Analyses;

- 7. Approve the appropriate letter.**

**Acting General Counsel**

Date \_\_\_\_\_

**Deputy Associate General Counsel for Enforcement**

## Assistant General Counsel

**Attorney**

1 **FEDERAL ELECTION COMMISSION**

2  
3 **FACTUAL AND LEGAL ANALYSIS**

4  
5 RESPONDENT: Rosalyn Levy Jonas

MUR 6993

6  
7 **I. INTRODUCTION**

8 This matter was generated by a Complaint filed with the Federal Election Commission.

9 The Complainant, EMILY's List, alleges that Rosalyn Levy Jonas may have violated the Federal  
10 Election Campaign Act of 1971, as amended (the "Act"), by making an excessive contribution to  
11 Van Hollen for Senate (the "Committee") by paying for the letter included with a Committee  
12 solicitation. Jonas denies the allegation.

13 As discussed below, the Commission finds no reason to believe that Rosalyn Levy Jonas  
14 violated 52 U.S.C. § 30116(a)(1)(A) by making an excessive contribution to the Committee  
15 because the Committee confirmed that it paid for the letter, not Jonas.

16 **II. FACTUAL AND LEGAL ANALYSIS**

17  
18 **A. Factual Background**

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20 EMILY's List is a non-connected political committee that supports female Democratic  
21 candidates who favor the "pro-choice" position on the issue of reproductive rights.<sup>1</sup> The  
22 Complainant states that on October 23, 2015, it produced an email comparing two Democratic  
23 candidates for the United States Senate in Maryland, Chris Van Hollen and Donna Edwards.  
24 The email's text referred to Van Hollen as the Democratic primary election opponent of  
25 Edwards, but in a graph later in the email, mislabeled Van Hollen as "(R)" [for Republican]  
26 instead of "(D)" [for Democrat].<sup>2</sup> Complainant states that it sent this communication to a test

1 See <http://www.emilyslist.org/>.

2 Compl. at 1 and Ex. A.

1 audience of approximately 5,000 individuals.<sup>3</sup> After being notified of the error within minutes of  
2 the email's transmission, the Complainant says that it immediately corrected the email.<sup>4</sup>  
3 Complainant states that it communicated with Van Hollen for Senate about the error, and offered  
4 to send a corrected version of the original email to the 5,000 recipients, but the Committee  
5 declined that offer.<sup>5</sup>

6 EMILY's List alleges that several days later, some of its donors who appeared on its  
7 2015 monthly disclosure reports notified it that they "received a letter from Rosalyn Levy Jonas  
8 accusing [Complainant] of 'deception' and engaging in 'aggressive, misleading tactics' in  
9 connection with the [email] communication."<sup>6</sup> In the letter, attached to the Complaint, Jonas  
10 identifies herself as a past Board Chair of NARAL Pro Choice America and a reproductive rights  
11 activist in Maryland.<sup>7</sup> The letter discusses the error that EMILY's List made in the email,  
12 provides information about Van Hollen's Democratic credentials, and urges support for Van  
13 Hollen in the Democratic primary election.<sup>8</sup> Complainant alleges that the letter was  
14 accompanied by a solicitation form—also attached to the Complaint—for Van Hollen's  
15 campaign that appeared on the back side of the Committee's reply envelope.<sup>9</sup>

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<sup>3</sup> Compl. at 1.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.* at 2.

<sup>7</sup> *Id.*, Ex. B.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* at 3 and Ex. C.

1 The Complaint alleges that if Jonas paid for the letter, then she made an excessive  
2 contribution to Van Hollen for Senate because she had already contributed \$2,700 to the  
3 Committee.<sup>10</sup>

4 Jonas denies the Complaint's allegations.<sup>11</sup> Jonas asserts that in response to the EMILY's  
5 List email misidentifying Van Hollen as a Republican, the Committee asked her to write a letter  
6 concerning the email confirming the Democratic credentials of Van Hollen.<sup>12</sup> The Committee  
7 acknowledges that it mailed the letter and paid for it, as evidenced by the disclaimer on the reply  
8 envelope and the appearance of the Committee's address under Jonas's name as the return  
9 address on the outer mailing envelope.<sup>13</sup>

10 **B. Legal Analysis**

11  
12 The Act provides limitations on the amount of contributions that persons shall make to  
13 any candidate and his authorized political committee with respect to any election for Federal  
14 office.<sup>14</sup> For the 2016 election cycle, persons are limited to making a contribution of \$2,700 to a  
15 candidate per election for Federal office.<sup>15</sup> If Jonas had paid for the letter, she would have made  
16 an excessive contribution to the Committee for the 2016 primary election because she had  
17 already made the maximum \$2,700 contribution to the Committee.<sup>16</sup> The Committee, however,

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<sup>10</sup> *Id.* at 4 n.4.

<sup>11</sup> Resp. at 1.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.* at 1-2.

<sup>14</sup> 52 U.S.C. § 30116(a)(1)(A) and 11 C.F.R. § 110.1(b).

<sup>15</sup> See 11 C.F.R. § 110.1(b)(1)(iii).

<sup>16</sup> See 52 U.S.C. § 30116(a)(1)(A); Van Hollen for Senate's 2015 April Quarterly Report at 36.

- 1 admits that it paid for the letter.<sup>17</sup> Therefore, the Commission finds no reason to believe that
- 2 Rosalyn Levy Jonas violated 52 U.S.C. § 30116(a)(1)(A).

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<sup>17</sup>

Resp. at 1-2.

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